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Director-General of Health
Ministry of Health
P O Box 5013
WELLINGTON

Attention Ryan McLean

Review of the Operation of the Health Practitioners Competence Assurance Act 2003

At this stage the Osteopathic Council offers the following comments for the review of the operation of the Health Practitioners Competence Assurance Act 2003.

We appreciate that the review process will occur over a lengthy period and that we are making these comments at an early stage. We would appreciate being kept informed of inputs from your consultations that may affect the Council or regulatory authorities generally. We are happy to add further comment in that light.

Several aspects of the Act do not directly concern the Council or other regulatory authorities, such as quality assurance activities, operating requirements of the Health Practitioners Disciplinary Tribunal, Court procedures, etc. We have no comments to make on most of those parts of the Act other than what is said in points 2 and 3 below.

1. The parts of the Act directly relating to regulatory authorities provide direction and a framework for the regulation of professions, leaving it to the regulatory authorities to fill in the professional and management details of the various components of that framework, e.g. scope of practice and qualifications, registration and practising certificate criteria, continuing competency requirements, etc.

We consider that this is a very sensible approach and that generally there is a good balance between the Act's high-level requirements and the Authorities' operating responsibilities. In particular it avoids the prescriptive and inflexible aspects of prior legislation for regulatory authorities, which can quickly become outdated; instead, it provides ongoing flexibility to make changes to requirements as the consumer and professional environments change.

We support that approach in the Act, which we find works well. We see no need to change that strategy.

In that light we have few comments to make about the operation of the Act.

2. One area of the Act that needs further attention is section 7 as to unregistered persons who practise techniques associated with osteopathy and who inappropriately convey the impression in patients' minds that they are osteopaths.

The most serious potential risks of osteopathy, the more so with persons untrained in osteopathic techniques, are spinal cord injury or stroke after manipulation of the neck. For certain patients, forceful manipulation can be dangerous and should never be done. This includes pregnant women and people with osteoarthritis of the neck or osteoporosis of the spine. Osteopaths are trained to check patients for these and other risk factors.

Serious injuries can occur with manipulation of the thoracic and lumbar regions of the spine, mainly disc injuries and fracture, some such as cauda equina lesions causing a lifetime of pain, paralysis and neurological deficit of the bowel and or bladder.

We do not have empirical evidence, but feedback and experience from the field confirm that osteopaths do deal remedially with cases where unregistered practitioners have caused injury. Some of the latter do not know even how to take a patient's case history or perform straightforward physical examinations. Many contraindications to osteopathic manipulations can simply be suspected by a trained osteopath when a person describes night pain, pain not aggravated by use, etc., but an untrained person would not pick up on these.

The observation we make about remedy for that situation is that the implications of the legislation are not common knowledge among unregistered practitioners and consumers. To the best of our knowledge there has been, and continues to be, no real publicity about these aspects of the legislation. We do consider that the Ministry of Health needs to keep the requirements of section 7 and its implications before the public.

That preventive approach should be accompanied by enforcement action. The relative lack of enforcement activity by the Ministry since the legislation came in has been a continual frustration for regulatory authorities and a frequent item of debate with Ministry representatives. Failing to act decisively against persons consciously holding themselves out to be osteopaths actually sends a powerful message that it is alright to do so.

We acknowledge that in recent times the Ministry has stepped up its enforcement activities, and this is appreciated. It is an area where continuing vigilance is required.

Many practitioners coming across cases of unregistered persons holding themselves out to be osteopaths report the cases to the Osteopathic Council. They do not realise that the Council is concerned only with registered practitioners and that the administration of the wider provisions of the Act, including section 7, are within the Ministry's purview. It would be beneficial if these respective responsibilities are clarified in the Act and/or in publicity about section 7.

3. The above matter of unregistered practitioners leads on to 'restricted activities' under section 9 of the Act.

We refer in particular to the currently specified activity of 'applying high velocity, low amplitude manipulative techniques to cervical spinal joints.' This applies only to the neck

portion of the spine, and not to the spine as a whole. This distinction has a public safety consequence.

Practitioners registered under the Act as manipulative practitioners, in particular osteopaths and chiropractors are specifically trained to diagnose and treat the spine. While restricting (to registered practitioners) manipulation of the cervical spine, goes some distance to prevent serious injury or death, it does not allow for serious injury or death in the case of the thoracic, lumbar, and pelvic-hip areas of the spine, which are also prone to disease states.

Some of the conditions which occur in these areas where manipulation would be contraindicated are:- osteoporosis – meningitis – cancer of the hip, pelvis, sacrum, spine – aortic aneurysm (may be ruptured by performing lumbar manipulation) - spinal disc herniation – tuberculosis of the bone – spinal stenosis – post operation spinal fusion – spina bifida, etc.

There is a significant risk to the public from unregistered practitioners who practise osteopathic techniques to the spine, and who fail to meet the standards of competency under the Act but can continue to practise using a different title. Simply taking away their entitlement to call themselves an osteopath does not safeguard those consumers that continue to be treated by them where manipulation of the spine is concerned.

There is also a high risk of an unregistered practitioner not knowing when to refer a patient who has come to them with back pain, for specialist treatment for a medical condition, because of a lack of differential diagnostic skills. This thereby delays the proper treatment, and can put a patient in a potentially life threatening situation.

The restricted activity should cover the entire spine, and not just the neck portion.

We are happy to provide further information, and we hope these submissions assist the review.

Yours sincerely

A handwritten signature in black ink, appearing to read "Jean Drage". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jean Drage
Chairperson